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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/656,554

09/05/2003

Martin Sproat

920476-94756

8188

23644 7590 10/30/2008  
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EXAMINER

NGUYEN, STEVEN H D

ART UNIT

PAPER NUMBER

2419

NOTIFICATION DATE

DELIVERY MODE

10/30/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent-ch@btlaw.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/656,554	SPROAT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Steven HD Nguyen	2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28,30-60,63 and 64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28,30-60,63 and 64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on 10/16/08 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 6643297 has been reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Objections***

2. Claims 21, 23, 31 and 64 objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

As claim 21, “the switch fabric comprises a packet mode switch” is referred to “a packet mode switch fabric” of line 2 and “the fabric switch” of line 4 of claim 17.

As claim 23, line 5, “said means” should be changed to “said switch means”.

As claim 31, lines 2-3, “the replicating means” should be changed to “switch means”.

As claim 64, “the method” must be changed to “the switch”.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

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4. Claims 18-19, 33-34, 41-42 rejected under 35 U.S.C. 101 because a single claim which claims both an apparatus and the method, is directed to non-statutory subject matter. The claim is directed into both a "method" and a "system," and overlaps two different statutory classes.

As claims 18, 33, and 41, the claims includes a step which is performed under the independent claims of system claims.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 17-28, 30-60, 63-64 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As claim 17, lines 11-12, claim 32, 40, line 12, "said processing" is vague and indefinite because it does not refer to any previous elements.

As claim 45, "the switch" is vague and indefinite because it's unclear what it is referred to "switch" of line 1 of claim 40 or "switch" of line 8 of claim 40. Please clarify, so the meter and boundary of the claim can be determined.

As claim 48, line 7, "said through channel" is vague and indefinite because it does not refer to any previous elements.

As claim 54, line 13, "said traffic data" is vague and indefinite because it does not refer to any previous elements.

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As claim 58, line 2, “said network service provider device” is vague and indefinite because it does not refer to any previous elements.

There is insufficient antecedent basis for this limitation in the claims.

Please check and correct the 112 of the claims.

### ***Allowable Subject Matter***

7. Claims 17, 32, 40, 48 and 54 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

The prior arts in the record fail to disclose a method and system for copying a stream of packets and forwarding them to a network service provider device for processing a service data related to traffic data and providing the service data in a packet stream to a system for forwarding them with said stream of packets within a structure of the claims.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571)272-3159.

The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Jayanti Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven HD Nguyen/  
Primary Examiner, Art Unit 2419